

1986

Shirley Ray Richards, Delores R. Merkley. Gordon A. Richards v. Vernon Richards : Brief of Appellant

Utah Supreme Court

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Dwight L. King; attorney for respondent.

Stephen D. Swindle, R. Stephen Marshall, Mark C. Said; Van Cott, Bagley, Cornwall & McCarthy; attorneys for appellant.

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BRIEF

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860536

IN THE SUPREME COURT OF THE STATE OF UTAH

SHIRLEY RAY RICHARDS,
DELORES R. MERKLEY, and
GORDON A. RICHARDS

Plaintiffs-Respondents,

vs.

VERNON RICHARDS,

Defendant-Appellant.

Case No. 860536

Priority
Category No. 13b

BRIEF OF APPELLANT VERNON RICHARDS

ON APPEAL FROM THE JUDGMENT OF
THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH
HONORABLE DAVID B. DEE, DISTRICT JUDGE

STEPHEN D. SWINDLE (3176)
R. STEPHEN MARSHALL (2097)
MARK C. SAID (4400)
VAN COTT, BAGLEY, CORNWALL &
McCARTHY
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144
Attorneys for Appellant

DWIGHT L. KING (591)
DWIGHT L. KING & ASSOCIATES, P.C.
Suite 205 Sentinel Bldg.
2121 South State Street
Salt Lake City, Utah 84115
Attorneys for Respondents

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VAN COTT, BAGLEY, CORNWALL &
McCARTHY
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144
Attorneys for Appellant

DWIGHT L. KING (591)
DWIGHT L. KING & ASSOCIATES, P.C.
Suite 205 Sentinel Bldg.
2121 South State Street
Salt Lake City, Utah 84115
Attorneys for Respondents

TABLE OF CONTENTS

| | |
|---|-----|
| TABLE OF AUTHORITIES | iii |
| ISSUES PRESENTED FOR REVIEW | 1 |
| STATEMENT OF THE CASE | 3 |
| A. <u>Nature of the Case</u> | 3 |
| B. <u>Disposition of the Case Below</u> | 3 |
| C. <u>Statement of the Facts</u> | 4 |
| SUMMARY OF ARGUMENT | 7 |
| ARGUMENT | 9 |
| <u>POINT I</u> THE LOWER COURT LACKED SUBJECT MATTER JURISDICTION AND VENUE WAS IMPROPER . . . | 9 |
| <u>POINT II</u> THIS COURT SHOULD REVIEW THE FINDINGS OF THE TRIAL COURT AS A CASE IN EQUITY . . . | 12 |
| <u>POINT III</u> THE WILLIAMS REAL ESTATE CONTRACT WAS NOT AN ASSET OF LLOYD RICHARDS' ESTATE . . . | 15 |
| <u>POINT IV</u> THE LOWER COURT ERRED IN HOLDING THAT THE FIRST SECURITY BANK AND ZIONS FIRST NATIONAL BANK ACCOUNTS WERE ASSETS OF THE ESTATE OF LLOYD RICHARDS | 17 |
| <u>POINT V</u> THE COURT BELOW FAILED TO PROPERLY APPLY THE LAW OF INTER VIVOS GIFTS | 19 |
| A. <u>Motor Home</u> | 20 |
| B. <u>Debts Owed to Lloyd Richards By His Children</u> | 20 |
| C. <u>Gifts By Bertha Richards to Her Children</u> | 24 |
| <u>POINT VI</u> THE COURT'S FINDING THAT VERNON RICHARDS TOOK POSSESSION OF WATER AND MINERAL RIGHTS IS UNSUPPORTED BY ANY EVIDENCE | 27 |

[illegible]

TABLE OF AUTHORITIES

CASES

| | |
|---|----------------|
| <u>Century 21 All Western Real Estate v. Webb,</u> 645 P.2d 52, 55 (Utah 1982) | 17 |
| <u>Greene v. Cotton,</u> 457 S.W.2d 403 (Kent. 1970) | 22 |
| <u>Greener v. Greener,</u> 116 Utah 571, 212 P.2d 194, 199 (1949) | 25 |
| <u>Helper State Bank v. Cruse,</u> 95 Utah 320, 81 P.2d 359, 365-66 (1938) | 25 |
| <u>In the Matter of the Estate of Hock,</u> 655 P.2d 1111 (Utah 1982) | 12 |
| <u>In re Estate of Ross v. Ross,</u> 626 P.2d 489 (Utah 1981) | 17, 18, 19, 25 |
| <u>Jensen v. Brown,</u> 639 P.2d 150, 151 (Utah 1981) | 12 |
| <u>Jessup v. Pursley,</u> 554 S.W.2d 540 (Mo. App. 1977) | 22 |
| <u>Leslie v. Minneapolis Society of Fine Arts,</u> 259 N.W.2d 898 (Minn. 1977) | 10 |
| <u>Matter of Estate of Congdon,</u> 309 N.W.2d 261, 265 (Minn. 1981) | 10 |
| <u>Pagano v. Walker,</u> 539 P.2d 452, 454 (Utah 1975) | 18 |
| <u>Prowitt v. Lunt,</u> 103 Utah 574, 137 P.2d 361 (1943) | 13 |
| <u>In re Ream's Estate,</u> 413 Pa. 489, 198 A.2d 556 (1964) | 20 |
| <u>In Re Russell,</u> 385 Pa. 557, 1232 A.2d 708 (1956) | 22 |
| <u>Vesey v. Vesey,</u> 237 Minn. 10, 53 N.W.2d 809, 812 (1952) | 10 |

STATUTES

| | |
|---|----|
| Utah Code Ann. § 75-1-201 | 10 |
| Utah Code Ann. § 75-1-302 | 10 |
| Utah Code Ann. § 75-1-308 | 12 |
| Utah Code Ann. § 75-6-101 to -115 | 18 |
| Utah Code Ann. § 75-6-104(1) | 18 |
| Utah Code Ann. § 75-3-909 | 26 |

OTHER AUTHORITIES

| | |
|---|----|
| 38 C.J.S. <u>Gifts</u> § 47 | 21 |
| Annot., "Gift of Debt to Debtor," 63 A.L.R.2d 259, 262-66 (1959) | 23 |

SHIRLEY RAY RICHARDS,
DELORES R. MERKLEY, and
GORDON A. RICHARDS

vs.

Defendant-Appellant.

Priority
Category No. 13b

Issues Presented for Review

1. Did the lower court have subject matter jurisdiction over this action, and did the lower court commit error in refusing to grant defendant's Motion to Dismiss, which was made on the grounds that the court lacked subject matter jurisdiction and because venue was improper?
2. Did the lower court err in holding that money paid into the First Security escrow account from the Williams Contract was an asset of Lloyd Richards estate even though Lloyd Richards had assigned or given the Williams Contract to Vernon Richards?
3. Did the lower court commit error in finding that the amounts in the checking accounts with First Security Bank and Zions First National Bank were assets of the estate of

Lloyd Richards, even though the accounts were jointly owned by Vernon Richards?

4. Did the lower court commit error in holding that the motor home given by Lloyd Richards to Vernon Richards prior to Lloyd's death constituted an asset of Lloyd Richard's estate?

5. Did the lower court commit error in holding that Lloyd Richards forgave plaintiffs of the debts and obligations that they admitted owing to him without a written release or other action sufficient to verify the release of such debt and in holding that such debts were not part of the estate of Lloyd Richards?

6. Did the lower court commit error in holding that, prior to her death, Bertha Richards made valid inter vivos distributions of money market certificates to her four children.

7. Did the lower court commit error in finding that Appellant Vernon Richards exercised control over water rights consisting of 2-3/4 shares of Central Irrigation Company and 31 shares of Steinaker Water in the Central Canal Company, Certificate Nos. 683 and 372?

8. Did the lower court commit error in finding that Appellant Vernon Richards Exercised control over mineral rights owned by decedent Lloyd Richards at his death.

STATEMENT OF THE CASE

A. Nature of the Case.

This is an appeal from the Findings of Fact and Conclusions of Law entered by the lower court on September 23, 1986, (R. 206-18) and from the Judgment docketed the same day, (R. 200-05). The Judgment determined that the parties to this action are the sole heirs of decedents Lloyd Richards and Bertha Richards and further determined that certain property belonged to the respective estates which should be divided equally among the parties.

B. Disposition of the Case Below.

This action was commenced on June 24, 1985. Vernon Richards filed his Answer and Counterclaim on August 27, 1985. (R. 10.) A Reply to Counterclaim was filed on November 19, 1985. (R. 28.) The case came for trial before the Honorable David B. Dee on April 8, 1986. Following the presentation of evidence, Judge Dee requested that final arguments be submitted in writing rather than presented orally, which was done. (R. 97, 115.) On September 23, 1986, the court issued its Memorandum Decision. (R. 144.) Vernon Richards thereafter objected to the proposed Findings of Fact and Conclusions of Law and Judgment submitted by plaintiffs. (R. 188.) The Objections were argued before the court on September 12, 1986, which took them under advisement. (R. 199.) Without ruling on

the Objections, the court subsequently signed the Findings of Fact and Conclusions of Law and Judgment that had been submitted by plaintiffs. (R. 200, 206.)

C. Statement of the Facts.

This action concerns the distribution of the estates of Bertha A. Richards and Lloyd Richards, the deceased parents of the parties to this lawsuit. Plaintiffs Shirley Richards, Delores Merkley, and Gordon "Laddy" Richards are defendant Vernon Richard's brothers and sister. (R. 206-07.) Lloyd Richards died testate in Vernal, Utah, on September 26, 1983. Bertha V. Richards died testate in Vernal, Utah, on July 21, 1983. (R. 207.) While alive, both Bertha and Lloyd Richards were domiciled in Vernal, Utah. Bertha and Lloyd Richards each left a Last Will and Testament which provided that the four children should inherit in equal shares. Neither will has ever been probated. (R. 207.)

The Williams Contract

On or about August 5, 1975, Lloyd and Bertha Richards entered into a Uniform Real Estate Contract with Robert H. Williams (the "Williams Contract"), under which Lloyd and Bertha, as Sellers, agreed to sell certain real property to Williams, as Buyer. The parties to the contract entered into an Escrow Agreement (Exhibit 37) with First Security Bank under which Williams agreed to make his payments to the bank, which

would disburse them to Lloyd and Bertha. When the contract was paid in full, the bank would deliver to Williams the deed to the property, certain water shares, and other documents.

Prior to his death, Lloyd Richards executed an Assignment of Contract dated August 12, 1983, assigning to Vernon Richards all right, title, and interest to the Williams Contract. (Tr. Vol. III at 10-12; Exhibits 34, 36). Lloyd Richards also substituted Vernon Richards in his place on the escrow account with First Security Bank. (Tr. Vol. III, at 14, 42-47; Exhibit 35.) After Lloyd Richard's death, Williams paid the balance due on the Williams Contract to First Security Bank which, in turn, paid all monies received in escrow to defendant Vernon Richards. (Tr. Vol. III, at 14-19.) The total amount paid to Vernon Richards from the escrow account following Lloyd's death was \$19,442.91. (Exhibits 26-29, 33.) In spite of the fact that the Williams Contract had been assigned to Vernon Richards and the fact that he had been substituted by Lloyd Richards as the owner of the escrow account, the lower court held that the receivable from the Williams Contract is an asset of Lloyd Richard's estate. (R. 202, 208-09, 212.)

The Checking Accounts

Prior to his death, Lloyd Richards had two checking accounts, one with Zions First National Bank and the other with First Security Bank of Utah. (R. 209.) At the time of his

death Lloyd Richards owned these accounts jointly with his son, Vernon Richards. (Tr. Vol. II, at 14.) The lower court held that monies contained in the joint accounts were assets of Lloyd Richard's estate, in spite of the fact that Vernon Richards was a joint tenant on the accounts. (R. 209, 212.)

Motor Home

Prior to his death, Lloyd Richards owned a motor home, of which he made a gift to his son Vernon Richards by delivering to him the title and the keys. (Tr. Vol. II, at 128.) When he gave him the title and the keys, Lloyd Richards told Vernon that he was giving him the motor home. (Tr. Vol. II, at 168-69.) The lower court held that the motor home is an asset of Lloyd Richard's estate.

Debts Owed by Plaintiffs to Bertha Richards

At the trial plaintiffs admitted owing certain debts to Lloyd and Bertha Richards. Gordon "Laddy" Richards and Shirley Richards each owed \$3,000.00 to Lloyd Richards. (Tr. Vol. I, at 30, 45-46; Exhibit 3.) Delores Merkley admitted owing \$5,000.00 to Lloyd Richards and \$5,000.00 to Bertha Richards. (Tr. Vol. II, at 88-89; Exhibits 10, 12.)

Plaintiffs claimed that the debts had been forgiven orally by their father at a family conference following Bertha's death. (Tr. Vol. I, at 49; Vol. II, at 71.) The lower court agreed, and found that the debts had been forgiven by Lloyd Richards,

(R. 207), even though Lloyd Richards did not deliver back to them the promissory notes or some other writing releasing them from their obligations.

Bertha Richard's Gifts to Her Children

Prior to her death, Bertha Richards purchased bank certificates in the names of her children. (Tr. Vol. I, at 18, Vol. II, at 77). The certificates were never delivered to any of the children during her life. (R. 207; Tr. Vol. I, at 17, 31, 53; Vol. II, at 28, 80). After her death, the certificates were collected by or delivered to the children and redeemed. The court below held that the certificates were valid gifts to Bertha's children. (R. 203).

SUMMARY OF ARGUMENT

1. By this lawsuit, plaintiffs sought a determination of the heirs of Lloyd and Bertha Richards and the distribution of their respective estates. As an action of this type, subject matter jurisdiction lies exclusive in the probate court of Uintah County. The lower court erred in denying Appellant's Motion to Dismiss or in the Alternative, to Stay Proceedings. This Court should vacate the judgment of the court below and remand the matter to the probate court of Uintah County.

2. Lloyd Richards validly assigned the Williams Contract to Vernon Richards. The proceeds of the contract

belong to Vernon Richards and are not an asset of Lloyd Richard's estate.

3. Lloyd Richards added Vernon Richards as a joint tenant to the two joint checking accounts with First Security Bank and Zions First National Bank. Vernon Richards signed the signature cards for these two accounts. Accordingly, the disposition of the accounts is governed by the Utah Multiple-Party Accounts statute, under which the accounts pass to the surviving joint tenant and not to the estate of the deceased joint tenant, absent clear and convincing evidence to the contrary. The evidence at trial of a contrary intent was not clear and convincing and the lower court erred in holding that the joint accounts were assets of Lloyd Richards' estate.

4. Prior to his death, Lloyd Richards made a gift of his motor home to Vernon Richards. He delivered the keys and title to the motor home to Vernon Richards and told Vernon he was giving it to him. Vernon Richards accepted the gift of the motor home and subsequently sold it. The lower court erred in holding that the motor home was an asset of Lloyd Richard's estate.

5. Lloyd Richards did not properly forgive the debts owed to him by plaintiffs. The law of inter vivos gifts applies to the forgiveness of debts. Oral debts may be forgiven only by a written release. Debts evidenced by a

writing, such as a promissory note, may be forgiven either by a written release or some other action which evidences an intent that the debts be discharged. The court below erred in holding that Lloyd Richard's oral forgiveness of the debts owed by plaintiffs was sufficient to discharge those debts.

6. Bertha Richards purchased bank certificates of deposit in the names of her children, but failed to deliver them to the recipients before her death. Because delivery is a necessary element in proving an inter vivos gift, the lower court erred in holding that the certificates were gifts and were not assets of the estate of Bertha Richards.

7. There was no evidence at trial to support the lower court's holding that Appellant exercised control over certain water rights and mineral rights.

ARGUMENT

I.

THE LOWER COURT LACKED SUBJECT MATTER JURISDICTION AND VENUE WAS IMPROPER.

Although the present action was not filed as a probate matter, it concerns the distribution of the assets of the respective estates of Bertha V. Richards and Lloyd Richards, each of whom died testate leaving a Last Will and Testament. Plaintiffs sought a determination of the heirs of each estate and a distribution of the assets of the estates as though this were a probate proceeding.

Pursuant to the Utah Uniform Probate Code, Utah Code Ann. § 75-1-302 (Rep. Vol. 1978), questions regarding a determination of heirs of an estate and the distribution of assets therefrom are exclusively within the purview of the "court," which is defined in section 75-1-201(5) as "any of the district courts of the State of Utah." In practice, probate matters are handled solely by the probate division of the district court for the county where the decedent resided.

Construing the same provision of the Uniform Probate Code, as enacted in Minnesota, the court in Leslie v. Minneapolis Society of Fine Arts, 259 N.W.2d 898 (Minn. 1977), stated:

In a number of areas, probate courts possess exclusive subject matter jurisdiction which is separate and distinct from the jurisdiction of the district courts. The most obvious function of the probate court, both in 1929 and [under the Uniform Probate Code], is to distribute the assets of a decedent's estate by determining those persons entitled to take under a Will. . . . Probate courts also have, for example, the exclusive power to admit a will and to appoint a representative.

Id. (emphasis added.) See Matter of Estate of Congdon, 309 N.W.2d 261, 265 (Minn. 1981) (upholding exclusive original jurisdiction of probate court to determine heirs of an estate); Vesey v. Vesey, 237 Minn. 10, 53 N.W.2d 809, 812 (1952) (holds that the probate court has exclusive original jurisdiction to adjudicate and determine heirs and to settle and distribute assets of an estate).

Even though the district court in Salt Lake County is a court of general jurisdiction, this action was not heard by the probate division of the district court, as it properly should have been. Moreover, pursuant to Utah Code Ann. § 75-3-201(1), venue for the first informal or formal testacy or appointment proceedings after a decedent's death is in the county where the decedent had his domicile at the time of his death. Thus, the proper forum for the probate of the estates of Bertha V. and Lloyd Richards is the probate court in Uintah County, where the decedents were domiciled.

Because questions involving the determination of heirs, the distribution of the assets of the estates of Bertha and Lloyd Richards, and the collection of debts owed to the estate are within the exclusive jurisdiction of the probate division of the district court for Uintah County, appellant moved the court below to dismiss the action for lack of subject matter jurisdiction and improper venue, or in the alternative, to stay the proceedings pending probate of the respective estates of the decedents in Uintah County. (R. 43-64). The motion was noticed (R. 41) and argued. The court denied the motion from the bench at the hearing, although there is no minute entry or order to that effect in the record.

Because the present action is in the nature of a probate proceeding, this Court should reverse the judgment of

the lower court and remand to the probate division of the district court for Uintah County.

II.

THIS COURT SHOULD REVIEW THE FINDINGS OF THE TRIAL COURT AS A CASE IN EQUITY.

Because this case is an equitable action in the nature of a probate proceeding, the scope of review is the same as other equitable actions. The Utah Uniform Probate Code, Utah Code Ann. § 75-1-308 (Repl. Vol. 1978), specifies the scope of appellate review in probate matters:

Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, arguments and power of the appellate court, is governed by the rules applicable to the appeals to the Supreme Court in equity cases from the court of general jurisdiction, except that in proceedings where jury trial has been had as a matter of right, the rules applicable to the scope of review in jury cases apply.

(Emphasis added.)

This case should be treated as a case in equity, under which standard this Court "has a duty, when called upon, to weigh the facts as well as to review the law." Jensen v. Brown, 639 P.2d 150, 151 (Utah 1981). According to In the Matter of the Estate of Hock, 655 P.2d 1111 (Utah 1982), the Supreme Court in an appeal in an equity proceeding, will "assess the quality and quantity of the evidence to determine

whether it 'clearly preponderates against' the trial court's finding that the appropriate standard of proof has been satisfied." Id. at 1114 n.1. See Prowitt v. Lunt, 103 Utah 574, 137 P.2d 361 (1943) ("As this is a suit in equity for the rescission of a contract, it is our duty to make an independent examination of the record and to review and weigh the evidence presented by the record.")

Accordingly, Appellant Vernon Richards urges this Court to review certain of the Findings of Fact against which the evidence clearly preponderated. Specifically, this Court should review the following Findings of Fact (R. 206-13):

5. That Lloyd Richards "forgave all debts that were owing by his heirs to him." (R. 207.)

6. That Vernon Richards took possession of the following, among other things, which are assets of the estate of Lloyd Richards (R. 208-09):

(a) A mobile home with a value of \$9,000.00.

(b) The real estate contract between Lloyd and Bertha Richards, as Sellers, and Robert H. Williams, as Buyer, dated August 5, 1975 and payments received by Vernon Richards in the amount of \$19,442.91.

(c) First Security Bank Account No. 123000012-062-16, Vernal Branch (balance \$2,942.41).

(d) Zions First National Bank Account No. 26-31432-8 (balance \$7,931.68).

(e) Water rights consisting of the following described items: 2-3/4 shares of Central Irrigation Company and 31 shares of Steinaker Water in the Central Canal Company, Certificate Nos. 683 and 3729.

(f) Mineral rights that attach to the property described in the contract of sale to Robert H. Williams.

12. That distributions of the estate of Bertha Richards to her children were "consummated during the lifetimes of Lloyd and Bertha Richards." (R. 212.)

13. That, as to consummated gifts and distributions, "the intentions of the deceased parents is demonstrated by clear and convincing evidence." (R. 212.)

14. That the heirs of Lloyd and Bertha Richards, have "by repeated transactions between themselves, demonstrated that they acknowledged awareness of the intentions of their parents as found by the Court." (R. 212.)

15. That the assets in the possession of Vernon Richards listed in paragraph 6 "have been held by defendant as a trustee for himself and the other parties to this action." (R. 212-13.)

III.

THE WILLIAMS REAL ESTATE CONTRACT WAS NOT AN ASSET OF LLOYD RICHARDS' ESTATE.

On August 12, 1983, Lloyd Richards assigned a Uniform Real Estate Contract to Vernon Richards. The contract assigned was dated August 5, 1975, and represented the sale of certain real property from Lloyd Richards and Bertha Richards to Robert H. Williams (the "Williams Contract"). In spite of the assignment, the lower court held that the Williams Contract was an asset of Lloyd Richard's estate. (R. 201-02, 208-09, 213.) This Court should reverse that holding and order that money paid to Vernon Richards from the Williams Contract was validly assigned to Vernon Richards. There was no evidence of an intention on the part of Lloyd Richards other than to give the Williams Contract to Vernon Richards. The evidence that Lloyd Richards assigned the Williams Contract to Vernon Richards was uncontroverted.

Vernon Richards testified that he and Lloyd Richards had signed the Assignment of Contract at the law offices of John Beaslin, in Vernal, Utah. Mr. Richards identified an

unsigned copy of the Assignment of Contract as the document that he and his father had signed. (Tr. Vol. III, at 10-13; Exhibit 34.) Following the conclusion of the trial, counsel for plaintiffs moved to reopen the case to introduce additional documentary evidence, which was granted. (R. 94.) Among the documents introduced was a copy of the Assignment of Contract showing the signatures of Lloyd Richards, as assignor, and Vernon Richards, as assignee, and of John C. Beaslin and Paula Williams, as witnesses. (Exhibit 36.) It was stipulated that the original signed Assignment of Contract was held by First Security Bank in Vernal as part of the escrow account. (Tr. Vol. III, at 54-57.) The other documents introduced by plaintiffs, which were obtained from First Security Bank, included the payment card, showing Vernon Richards as the person to whom payments were to be made, (Exhibit 36), and the Escrow Agreement between Lloyd and Bertha Richards and Robert Williams, (Exhibit 37).

Paragraph 1 of the Assignment (Exhibit No. 36) recites that the assignment was made in consideration "of the payment of Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged." The recitation of consideration in the Assignment is sufficient to make it an enforceable contract obligation. This is the case even if the consideration recited was never actually received. See

Century 21 All Western Real Estate v. Webb, 645 P.2d 52, 55 (Utah 1982). Even if the lower court had found, which it did not, that the assignment was not supported by consideration, ample evidence was presented to support the conclusion that the assignment was a valid inter vivos gift. The elements necessary to establish an inter vivos gift are: (1) a clear intention on the part of the donor; (2) delivery; and (3) acceptance. In re Estate of Ross v. Ross, 626 P.2d 489 (Utah 1981). Lloyd Richards hired an attorney, John C. Beaslin, to prepare and witness the Assignment (Tr. Vol. III, at 12), who, presumably, would have provided differently had the transaction been other than an outright gift to Vernon Richards.

The lower court had no basis for its conclusion that the proceeds of the Williams Contract constituted an asset of Lloyd Richard's estate. Accordingly, this Court should reverse the lower court and hold that the money paid to Vernon Richards from the Williams Contract and the First Security Bank escrow account is not an asset of the estate of Lloyd Richards.

IV.

THE LOWER COURT ERRED IN HOLDING THAT THE FIRST SECURITY BANK AND ZIONS FIRST NATIONAL BANK ACCOUNTS WERE ASSETS OF THE ESTATE OF LLOYD RICHARDS.

Prior to his death, Lloyd Richards changed the checking accounts with First Security Bank and Zions First National Bank so that Vernon Richards would become a joint

tenant. (Tr. Vol. III, at 14, 36). Both banks thereafter paid money out of the accounts to Vernon Richards on his request. (Tr. Vol. III, at 21).

Joint bank accounts in Utah are governed by the Utah Multiple-Party Accounts statute. Utah Code Ann. § 75-6-101 to -115 (Repl. Vol. 1978.). Because the accounts in question were payable on request to either Lloyd Richards or Vernon Richards, they were joint accounts as defined by Utah Code Ann. § 75-6-101(4). There was no evidence that the two checking accounts were other than joint accounts. At the time of Lloyd Richards' death, the two joint accounts thus became the sole and exclusive property of Vernon Richards, the surviving joint tenant, pursuant to Utah Code Ann. § 75-6-104(1), which provides:

Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created.

The clear and convincing standard "[r]equires a finding not merely that the existence of the disputed facts is more probable than not, but rather that it is very highly probable that such facts exist." Estate of Ross v. Ross, 626 P.2d 489, 491 (Utah 1981). See Pagano v. Walker, 539 P.2d 452, 454 (Utah 1975) (joint tenancy account entitled to

presumption of validity and may be set aside only by clear and convincing evidence).

Because the court below received no evidence at all of any intention on the part of Lloyd Richards that the money in the joint accounts should not pass entirely to Vernon Richards upon his death, the court erred in holding that the two accounts are asset of Lloyd Richard's estate. Accordingly, this Court should reverse the decision of the court below, and hold that the money in the two joint accounts passed exclusively to Vernon Richards on Lloyd Richards' death.

V.

THE COURT BELOW FAILED TO PROPERLY APPLY
THE LAW OF INTER VIVOS GIFTS.

The lower court found that a motor home in the possession of Vernon Richards was an asset of the estate of Lloyd Richards (R. 208); that certain debts owed by plaintiffs to Lloyd Richards had been forgiven (R. 207); and that Bertha Richards made valid inter vivos gifts to her children of certain money market certificates, prior to her death (R. 207). Each of these questions is controlled by the law of inter vivos gifts. In Utah the necessary elements of an inter vivos gift are: (1) a clear intention on the part of the donor; (2) delivery; and (3) acceptance. In re Estate of Ross v. Ross, 626 P.2d 489, 491 (Utah 1981). The validity of each gift is evaluated below.

A. Motor Home.

Prior to his death, Lloyd Richards owned a motor home which he gave to his son Vernon Richards by delivering to him the title and keys. (Tr. Vol. II, at 128). The court below received no evidence to rebut the evidence that Lloyd Richards intended to give the motor home to Vernon Richards, and that Lloyd Richards did in fact deliver the keys and the title to the motor home. (Tr. Vol. II, at 126-8, 168-9). Vernon Richards subsequently took possession of the motor home and sold it. (Tr. Vol. II, at 112.) Because all of the elements were met the transfer of the motor home clearly constitutes a valid inter vivos gift under Utah law. Delivery of the keys to a motor vehicle is properly regarded as constructive delivery of the vehicle. In re Ream's Estate, 413 Pa. 489, 198 A.2d 556 (1964).

Because there was no evidence to support the conclusion of the court below that the motor home was an asset of Lloyd Richards' estate rather than a gift to Vernon Richards, this Court should reverse the decision of the trial court.

B. Debts Owed to Lloyd Richards By His Children

Each of plaintiffs admitted at the trial that he or she had borrowed money from Lloyd and Bertha Richards. Although there was some difficulty in establishing the exact

amounts borrowed, Gordon "Laddy" Richards admitted borrowing \$3,000.00 and signing a promissory note payable to Lloyd Richards in that amount. (Tr. Vol. I, at 45-46; Exhibit 3). Shirley Richards admitted owing at least \$3,000.00 to Lloyd Richards. (Tr. Vol. II, at 30). Delores Merkley admitted owing \$5,000.00 to Lloyd Richards and \$5,000.00 to Bertha Richards. (Tr. Vol. II, at 88-89; Exhibits 10, 12.)

The court below held that these debts were forgiven by Lloyd Richards at a family conference following Bertha's death. (R. 207.) This finding was contrary to the general rule of law that forgiveness of a debt constitutes a gift and that all of the elements of a gift, including the element of delivery, must be satisfied. The general rule is set forth in 38 C.J.S. Gifts § 47:

The cancellation and surrender of the evidence of the indebtedness to the donee is a sufficient indication of the forgiveness thereof. Thus the voluntary surrender of a promissory note by the payee to the maker will operate as a gift and extinguishment of the debt, and in such case it is not necessary to the validity of the gift that the note should be endorsed by the payee

. . . .

A gift of a debt due by parol can be made only by the creditor's execution of a release in writing, or the performance of some act by which the debt is placed beyond his legal control.

Id. at 829-30 (footnotes omitted.)

In In Re Russell, 385 Pa. 557, 1232 A.2d 708 (1956), the court considered whether the decedent had validly forgiven a debt by his oral statement that the debt was forgiven. The court held that it was not forgiven without

a delivery, actual or symbolical, in order to effect a gift of a debt due by the donee and this delivery must be made by transfer of the possession of the evidence of the indebtedness or its equivalent. . . . The fact that the creditor does not intend to call on the debtor for payment of the debt, and so states, no receipt or release being given, does not establish a gift. . . . The rule has long been that no merely oral declaration will transfer a debt into a gift.

Id. at 713.

Thus, in Jessup v. Pursley, 554 S.W.2d 540 (Mo. App. 1977), the court held that promissory notes had not been validly forgiven since they did not comply with all of the requirements of an inter vivos gift, including delivery. The court noted that the evidence did not show a present intention to make a gift. As the court observed, "[n]o writing was executed, no mutilation or destruction of the notes occurred, and no attempt was made to place the notes into defendant's possession actually, constructively, or symbolically." Id. at 541. See Greene v. Cotton, 457 S.W.2d 493 (Kent. 1970) (Court held that a mere statement, declaration, or memorandum by the creditor that he intends to give the debt to the debtor and that the amount remaining unpaid at his death is to be

forgiven is ineffectual for such purpose); Annot., "Gift of Debt to Debtor," 63 A.L.R.2d 259, 262-66 (1959) (forgiveness of a debt requires (1) donative intent, (2) execution of such an objective act which extinguishes the debt or divests the creditor of his title thereto, such as surrender of the note to the debtor, and (3) acceptance of the gift).

None of the evidence at trial supports the court's finding that Lloyd Richards validly forgave the debts owed by plaintiffs. He did not execute any written release of the debts owed, nor did he return the promissory notes executed by Gordon Richards and by Delores Merkley. (Exhibits 3, 10.) Plainly, under the authorities cited, Lloyd Richards' oral statement at the family conference by itself is ineffective to constitute a valid gift of the debts. Those debts evidenced by instruments could only have been forgiven by the redelivery of the promissory notes to plaintiffs or of a written release. Shirley Richards' debt, which was oral, could only have been forgiven by delivery of an instrument by which Lloyd indicated his release of the debt. As it was, the element of delivery was lacking and plaintiffs cannot claim that a valid *inter vivos* gift was made.

Accordingly, this court should find either that evidence presented to the lower court does not support the findings reached or that the lower court misapplied the law on

inter vivos gifts. The judgment below should therefore be reversed.

C. Gifts By Bertha Richards to Her Children

At the trial below, plaintiffs introduced evidence that there were no significant assets left in Bertha Richards' estate when she died because she had previously obtained bank certificates of deposit in the names of her children. These certificates were in uneven amounts because, according to plaintiffs, Bertha Richards wanted to give \$1,000.00 to each of her grandchildren and great grandchildren. According to the undisputed evidence at trial, (Tr. Vol. II, at 19; Exhibit 1), the four children received the following amounts from Bertha's estate:

| | |
|------------------|------------------|
| Delores Merkley | \$ 35,541.34 |
| Laddy Richards | 39,541.34 |
| Shirley Richards | 36,541.34 |
| Vernon Richards | <u>22,541.34</u> |
| TOTAL | \$134,165.36 |

The evidence was undisputed that the certificates were never delivered to the four children during Bertha's life. Each of plaintiffs testified that he or she did not receive the bank certificates from Bertha before she died. (Tr. Vol. I, at 17, 31, 53; Vol. II, at 28, 80). The trial court also found in Finding of Fact No. 5, that it was not until the family conference following Bertha's death that the certificates were

delivered. (R. 207.) The element of delivery during the donor's life was missing, and therefore the purported inter vivos gifts were invalid.

As this Court stated in In re Estate of Ross v. Ross, 626 P.2d 489 (Utah 1981):

An important purpose of the delivery requirement is to avoid the hedging of a would-be donor who wishes to retain certain benefits of ownership, including the control of the gift property, while designating another as the recipient of the property during the donor's lifetime. If a gift is not completed before one's death, of course, it is subject to the formalities of testamentary disposition.

Id. at 492 (emphasis added.) See Greener v. Greener, 116 Utah 571, 212 P.2d 194, 199 (1949) ("The most widely accepted view is that the property passes as a gift inter vivos, provided there is a donative intent and delivery"); Helper State Bank v. Cruse, 95 Utah 320, 81 P.2d 359, 365-66 (1938) ("It is an elementary rule of law that in gifts inter vivos as well as gifts causa mortis the title to the thing given must pass from the donor to the donee. In contemplation of law there can be no executory gift").

Because there was no evidence in the court below expressly contradicted the finding that the certificates were delivered during Bertha Richards' lifetime, this Court should hold that the purported gifts were invalid, and that the money represented by the certificates is an asset of her estate to be

divided equally among the four children. Those parties who received greater than their one-fourth share must be ordered by the court to repay the amounts improperly distributed. Utah Code Ann. § 75-3-909 provides:

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

(Emphasis added).

As shown by Exhibit 1, the total liquid assets in Bertha's estate at the time of her death was \$134,165.36. Each of the four children was entitled to receive one-fourth, or \$33,541.34. In order for each child to have an equal distribution, the following amounts should be paid by plaintiffs to Vernon Richards:

| | |
|-------------------------|------------|
| Delores Merkley | \$2,000.00 |
| Gordon "Laddy" Richards | \$6,000.00 |
| Shirley Richards | \$3,000.00 |

Plaintiffs have the burden of proving that their mother made a gift to them of the certificates, which was completed before her death. Estate of Ross v. Ross, 626 P.2d at 491. If the gift was not completed before Bertha's death, "it is subject to the formalities of testamentary

disposition." Id. at 492. Because plaintiffs did not carry their burden with respect to the certificates, this Court should order that the funds contained therein be distributed evenly and that each of plaintiffs pay to Vernon Richards amounts sufficient to give him an equal share.

VI.

THE COURT'S FINDING THAT VERNON RICHARDS
TOOK POSSESSION OF WATER AND MINERAL RIGHTS
IS UNSUPPORTED BY ANY EVIDENCE.

In Finding of Fact No. 6(e) and (f), the trial court found that appellant Vernon Richards took possession and exercised control of certain water rights as represented by stock in Central Irrigation Company and Central Canal Company and of mineral rights which were retained by grantors in the sale of certain real property to Robert H. Williams. (R. 209.) This finding lacks any support whatsoever in the record and should be reversed.

CONCLUSION

Based upon the foregoing arguments, appellant Vernon Richards respectfully urges this Court to reverse the judgment of the lower court on the following grounds:

(1) The lower court lacked subject matter jurisdiction and venue over the action, which was in the nature of a probate proceeding.

(2) The Williams Contract was assigned or given to Vernon Richards by Lloyd Richards and money paid from the First Security escrow account to Vernon Richards are not assets of Lloyd Richard's estate.

(3) The amounts Lloyd Richards and Vernon Richards held in joint checking accounts with First Security Bank and Zions First National Bank passed to Vernon Richards by operation of law upon the death of Lloyd Richards and outside of his estate.

(4) Lloyd Richards made a gift of the motor home to Vernon Richards and the motor home is not an asset of Lloyd Richard's estate.

(5) Lloyd Richards did not validly forgive the debts owed him by plaintiffs Delores Merkley, Gordon "Laddy" Richards, and Shirley Richards and such debts remain assets of his estate.

(6) Bertha Richards did not make valid gifts of the money market certificates to her children prior to her death because the certificates were not delivered. The money represented by the certificates is an asset of her estate.

(7) Vernon Richards never exercised control over any mineral rights and water rights that may be owned by the estates of Lloyd and Bertha Richards.

ADDENDUM

Appellant/Defendant Vernon Richards has appended hereto copies of the following documents:

1. Assignment of Contract dated August 12, 1983.
(Exhibit 36.)
2. Payment ledger card for Williams escrow account.
(Exhibit 35.)
3. Escrow Agreement dated August 5, 1975. (Exhibit 37.)
4. Lower Court's Memorandum Decision dated August 19, 1986. (R. 144.)
5. Findings of Fact and Conclusions of Law dated September 24, 1986. (R. 200.)
6. Judgment dated September 23, 1986. (R. 200.)

DATED this 22nd day of April, 1987.

VAN COTT, BAGLEY, CORNWALL & McCARTHY
Stephen D. Swindle
R. Stephen Marshall
Mark C. Said

By *R Stephen Marshall*
Attorneys for Appellant/defendant
Vernon Richards
50 South Main, Suite 1600
P. O. Box 45340
Salt Lake City, Utah 84145
Telephone: (801) 532-3333

CERTIFICATE OF SERVICE

I hereby certify that I caused four true and correct copies of the within and foregoing Brief of Appellant to be hand delivered this 24th day of April, 1987, to the following:

Dwight L. King, Esq.
Dwight L. King & Assoc PC
2121 South State Street
Salt Lake City, Utah 84115

J. Marshall

4506m
042287

"THIS IS A LEGALLY BINDING CONTRACT IF NOT UNDERSTOOD. SEEK COMPETENT



ASSIGNMENT OF CONTRACT

THIS AGREEMENT, made in the City of Vernal, State of Utah on the 12th day of August, 1983 by and between LLOYD RICHARDS, a widower, hereinafter referred to as the assignors, and VERNON L. RICHARDS, a married man, hereinafter referred to as the assignees,

WITNESSETH:

WHEREAS, under date of August 5, 1975, LLOYD RICHARDS & BERTHA RICHARDS, husband and wife, as sellers, entered into a Uniform Real Estate Contract with ROBERT H. WILLIAMS, a married man, as buyers, of Vernal, Utah, which contract is delivered herewith, wherein and whereby the said sellers agreed to sell and the said buyers agreed to purchase, upon the terms, conditions, and provisions therein set forth, all that certain land, with the buildings and improvements thereon, erected, situate, lying and being in the County of Uintah, State of Utah, and more particularly described as follows:

SEE ATTACHED EXHIBIT "A"

to which agreement in writing, reference is hereby made for all of the terms, conditions and provisions thereof, and

WHEREAS, the assignees desire to acquire from the assignors all of the right, title and interest of the assignors in said property above described as evidenced by said written agreement.

NOW, THEREFORE, it is hereby mutually agreed as follows:

1. That the assignors in consideration of the Payment of Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, assign to the assignees, all their right, title and interest in and to said above described property as evidenced by the aforesaid Uniform Real Estate Contract of August 5, 1975 concerning the above described property.
2. That to induce the assignees to pay the said sum of money and to accept the said contract, and the rights obligation pursuant thereto the assignors hereby represent to the assignees as follows:
 - a. That the assignors have duly performed all the conditions of the said contract.
 - b. That the contract is now in full force and effect and that the unpaid balance of said contract is \$ 17,871.28, with interest paid to the 15th day of July, 1983.
 - c. That said contract is assignable.
3. That in consideration of the assignors executing and delivering this agreement, the assignees covenant with the assignors as follows:
 - a. That the assignees will duly keep, observe and perform all of the terms, conditions and provisions of the said agreement that are to be kept, observed and performed by the assignors.
 - b. That the assignees will save and hold harmless the assignors of and from any and all actions, suits, costs, damages, claims and demands whatsoever arising by reason of an act or omission of the assignees.

IN WITNESS WHEREOF, The parties hereto have hereunto set their hands and seals the day and year first above written.

Paula Williams
WITNESS

Lloyd Richards
Lloyd Richards
ASSIGNORS

[Signature]

[Signature]

EXHIBIT "A"

INNING at a point on the 1/8 line 9 rods West of the Northeast corner of the Southeast quarter of the Northeast quarter of Section 16, Township 4 South of Range 21 East of the Salt Lake Meridian, and running thence West 151 rods to the quarter line; thence South 80 rods; thence East 436 feet; thence North 22-1/3 rods; thence East to the East line of the Section; thence North 16 rods; thence West 16 rods; thence North 10 rods; thence East 16 rods; thence North 2/3 rods to a point 3 rods South of the Northeast corner of the Southeast quarter of the Northeast quarter of said Section 16; thence West 9 rods; thence North 3 rods to the place of beginning. Containing 62 acres, more or less.

S the following described property:

INNING at a point on the East line of Section 16, Township 4 South, Range 21 East, Salt Lake Base & Meridian, 45.82 feet South of the Northeast corner Southeast quarter Northeast quarter, said section, thence South along said section line 450.35 feet, thence West parallel to the North line Southeast quarter Northeast quarter, said section 151.78 feet, thence North parallel to the East line said section 151.31 feet, thence North 89°59'04" West 213.16 feet, thence North 18'44" West 293.71 feet to the North line Southeast quarter Northeast quarter said section, thence East along said 1/16th line 254.50 feet, thence North parallel to East said section 18.38 feet, thence East parallel to said 1/16th line 151.87 feet, thence South parallel to East line said Section 33.0 feet, thence South 71°22'59" East 97.99 feet, thence East parallel to said 1/16th line 126.88 feet to point of beginning. Bearings shown are based on the assumption that the East line of Section 16, bears South 0°21'18" East. Contains 5.2 acres, more or less.

INTERS hereby retain unto themselves a one-half interest in all oil, gas, hydro-carbons and mineral rights on or under the above described property.

ETHER with all water and water rights thereunto belonging, including the following water and water rights: 2-3/4 shares of Central Irrigation Company; and 31 shares of Steinaker Water in the Central Irrigation Company.

VENDEE Williams, Robert H.
 BUYER
 VENDOR Richards, Lloyd & Bertha
 SELLER

NO. 2
 DATE 7-22-1975

DESCRIBE ITEMS Escrow Agreement, Warranty Deed, Contract, Abstract of Title, Two Water Cert.

DATED 8-5-75 UNPAID BALANCE \$ 91,432.00 PAYMENT \$ 6,095.17 INC. INT. PLUS INT. RATE 9% # 683 & 3729 DATE DUE 7-15-76

Annual + Int. 50.00 SETTING UP FEE \$ 50.00 ANNUAL FEE \$ 7.00 MONTHLY FEE \$

CREDIT OR REMIT PAYMENTS TO Richards, Lloyd & Bertha 6450-250-50 Richards, Vernon
 NAME TO CHECKING ADDRESS 2247 So. 2200 East
 CITY Salt Lake City STATE Ut ZIP 84109
 FORM 10-1 REV. 10-53 PAYMENTS

| DATE | REC. NO. | INTEREST PAID TO | INTEREST PAYMENTS | PRINCIPAL PAYMENTS | BALANCE | DATE | REC. NO. | INTEREST PAID TO | INTEREST PAYMENTS | PRINCIPAL PAYMENTS | BALANCE |
|--------------------|----------|------------------|-------------------|--------------------|-----------|----------|----------|------------------|-------------------|--------------------|---------|
| Addendum Agreement | | | | | 91,432.00 | 7-20-82 | 18 | 7-15-82 | 3260.11 | 9174.64 | 27 |
| Annual payment of | | | 8228.88 | 9143.20 | 82288.80 | Int 1982 | | | 3260.11 | | |
| 9-10-76 | 7-15-76 | | | | | 8-1-83 | 18 | 7-15-83 | 3260.11 | 91774.71 | 17 |
| 7-6-77 | 7-15-77 | 7425.99 | | 9143.20 | 73145.60 | 6-26-84 | 25 | 6-26-84 | 1524.68 | 33783.17 | |
| 7-11-78 | 7-15-78 | 6583.10 | | 9143.20 | 64602.40 | 7-2-84 | 26 | 7-2-84 | 2593 | 54233.16 | |
| Int 78 | 7-15-78 | | 6583.10 | | | 7-9-84 | 26 | 7-9-84 | 2090 | 102970.1 | |
| 7-20-79 | 7-15-79 | 5766.22 | | 9143.20 | 54859.20 | 7-16-84 | 28 | 7-16-84 | 312 | 781302 | |
| Int 79 | 7-15-79 | | 5766.22 | | | | | | | | |
| 7-31-80 | 8-15-80 | 4933.22 | | 9143.20 | 45716.00 | | | | | | |
| Int 80 | 8-15-80 | | 4933.22 | | | | | | | | |
| 7-8-81 | 7-15-81 | 3704.99 | | 9142.01 | 36223.50 | | | | | | |
| Int 1981 | | | 3704.99 | | | | | | | | |

Received all papers on
 August 2, 1984

[Signature]



ESCROW AGREEMENT



to First Security Bank of Utah, N.A.

Vernal Office

Vernal, Utah 84078

(Address)

The undersigned, LLOYD RICHARDS and BERTHA RICHARDS, husband and wife,

hereinafter called "Grantor," and ROBERT H. WILLIAMS

hereinafter called "Grantee," herewith deliver to you in escrow the documents and property hereinafter described to be held and disposed of by you in accordance with the instructions and upon the terms herein set forth, and not otherwise, of all of which the undersigned hereby agree. Said documents and property are described as follows:

- ☒ Warranty Deed from Sellers to Buyer
- ☒ Original Contract
- ☒ Original Escrow Agreement
- ☒ Abstract
- ☒ Water shares

You are hereby authorized and directed to deliver the above described documents and property to Grantee upon payment to you, at the address above specified, for the Grantor of the total sum of \$ 126,432.00 principal, and interest on the unpaid balance thereof at nine..... per cent per annum from August 5, 1975 to be paid as follows:

(Specify date and amount of each payment of principal and dates of interest payment.)

Pursuant to terms of contract.

provided, however that you are authorized to receive any or all such payments or any part thereof at any time (the above dates specified therefor (hereinafter referred to as the due dates) and prior to delivery of said documents and property to Grantor as hereinafter provided with like effect as if paid on or before said due date

If, however, at any time prior to full payment of all principal and interest above specified Grantor delivers to you at the office above specified written demand for the delivery of such documents and property to him specifying in detail as grounds therefor either

(a) That all or any part of any payment of principal or interest above specified remains unpaid and that the due date therefor has passed or

(b) That Grantee has failed to perform any specified term or condition other than payment of principal and interest, encumbent on him to be performed under that certain contract dated August 5, 1975 made by and between Grantor herein as one party and Grantee herein as the other party copy of which is deposited with you herewith for purposes of identification then in such event or events hereinafter called defaults you shall promptly deliver to Grantee personally or at your option deposit in the United States mail postage prepaid addressed to Grantee Vernal, Utah 84078

or at such other address as he may have directed by writing previously delivered to you at the branch above designated copy of such demand If it appears by your records that all payments of principal or interest designated in said demand and for which the due date has actually arrived are fully paid or if not then if the same be paid before the expiration

of days after said copy of demand is so delivered or mailed to Grantee and within the same time Grantee also proves to your satisfaction that none of the other defaults if any specified in said demand existed at the time said demand was made or if they did that they do so no longer, Grantor's said demand shall be disregarded and you shall continue to hold said documents and property under the terms hereof and to receive the payments as above specified at the times and on the same conditions and to the same effect as if no such demand had been made, otherwise all said documents and property then held by you shall be delivered to Grantor, provided however that you may at your option at any time without liability to anyone, withhold delivery of all said documents and property and decline to receive further payments hereunder until your rights powers and duties hereunder in any respect requested by you have been settled acceptably to yourselves by further written instructions of the undersigned or finally determined by judicial action

It is further agreed that this instrument contains the entire agreement between you and the undersigned or any of them and that you are not a party to nor bound by the contract referred to in paragraph designated (b) above or any revision thereof nor by any instrument or agreement other than this whether between or among the undersigned themselves or otherwise that you shall not be required to take notice of any default or any other matter nor bound by or required to give any notice or demand nor required to take any action whatever except as herein expressly provided, and you shall not be liable for any loss or damage not caused by your own negligence or willful misconduct

The undersigned agree to pay you as compensation for your services hereunder an initial fee of \$ 50.00 payable annually in advance for each additional year or fraction thereof after the first year that any money document or property shall be held by you hereunder, and an additional fee of 1/10th of 1% (but not less than \$1.00 on each collection) of all funds received by you hereunder together with all actual and necessary expenses and liabilities you may incur hereunder for all of which you are granted a first lien on all of the above described property and documents and all funds coming into your hands hereunder and you shall be under no obligation to deliver any of said documents property or funds until such lien is discharged anything herein contained to the contrary notwithstanding

All funds collected on this escrow are to be distributed as follows

First To the payment of all escrow fees charges and expenses of the escrow agent incident to this account

Second The escrow agent is authorized to expend from funds received any amounts due for Revenue Stamps on deeds at the time the deed is delivered

Third The balance is to be remitted to grantors at the following address or any other address subsequently furnished by the above named party entitled to receive funds collected on this escrow

The words Grantor and Grantee and the language of this instrument, where there is more than one grantor or grantee shall be construed as plural and be binding equally on all such grantors and/or grantees and in cases where one or more are females the masculine shall include the feminine The word undersigned as hereinbefore used refers to the grantors and/or grantees and not to you

IN WITNESS WHEREOF, the parties have executed this instrument in triplicate, this 5th day of August, 1975 at Vernal, Utah 84078

Robert H. Williams

Lloyd Richards
Bertha Richards

GRANTEES

GRANTORS

STATE OF UTAH,
County of UINTAH }

On this 5th day of August, 1975, in the year 1975, before me, the undersigned, Notary Public in and for said state, personally appeared Lloyd Richards and Bertha Richards, husband and wife, and Robert H. Williams,

known to me to be the person (s) whose name (s) are subscribed to the foregoing instrument, and acknowledged me that (t) he (y) executed the same

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first in is certificate written

John C. Beardsley
Notary Public for Vernal, Utah

My Commission Expires:
November 26, 1976

Residing at Vernal, Utah 84078

The undersigned bank hereby acknowledges receipt of the documents and property described in the foregoing agreement and agrees to hold and dispose of the same in accordance with the instructions and upon the terms and conditions above set forth

Dated at Vernal, Utah

1975 FIRST SECURITY BANK OF UTAH N.A.

BY Barbara Bohne

it would have heard the argument had it been delivered orally and thus the delay in a resolution of the matter and the preparing of a written Memorandum Decision by the court.

The plaintiffs in this case complain that there has not been a distribution of the estate of Bertha B. Richards and Lloyd Richards by the Executor, the defendant herein, and they are asking for money damages and an account of those estates with equal distribution of the properties remaining, both real and personal. The issue presented to the court is whether the allegations of the plaintiffs concerning the distribution of the estates and the breach of fiduciary responsibility by the defendant has resulted in a damage to the plaintiffs which is compensable in this probate litigation.

The defendant and the plaintiffs are the sole heirs at law of Bertha V. Richards who died testate July 21, 1983 and Lloyd Richards who also died testate in Vernal, Utah on September 6, 1983. Following the death of Bertha Richards the parties herein held several meetings where all the debts and obligations including unpaid loans owed by the parties to the estate were either forgiven with due consideration or settled by the parties.

This court takes the position that the debts which were claimed by the defendant herein have in fact been discharged by the remaining parent, Mr. Lloyd Richards, even though at the time of his death there were apparently in existence several promissory notes kept in a candy box which after his death could

not be located. Mr. Richards took the position that all those notes disappeared, conveniently as far as the plaintiffs were concerned, after the death of Mr. Lloyd Richards and the court is unable to decide this by a preponderance of the evidence so it takes the position that those debts have been in fact discharged and forgiven.

The court takes no position on the distribution and equalization or levelling out of the monies between the parties which occurred subsequent to the death of Lloyd wherein the parties thought additional payments to Vernon would compensate him for receiving less out of the estate in cash than the plaintiffs had because his family was smaller than theirs and the thousand dollar gift to the greatgrandchildren by the mother, Bertha, at that time, resulted in a partial inequitable distribution for that reason.

The court further takes the position in this matter that all of the distribution of personal property including bank accounts, both at Zion's First National and at First Security Bank as well as the water company stock, the oil royalties and all other stocks, bonds, certificates, savings accounts, etc. either has been distributed or should be distributed on an equal basis so that Shirley, Delores and Gordon receive equal shares with Vernon in all of that not heretofore distributed.

As to the real property, being the family home in Vernal, it should be sold as soon as reasonably possible and the sums

received from that sale divided equally between the four children.

The court takes the position that the defendant herein has not breached any fiduciary duty and that to a certain extent his attempts to sell the home have been thwarted by conduct of the plaintiffs and that his fiduciary responsibilities to a certain extent have also been interfered with, making it impossible for him to completely discharge the obligations imposed by the wills as well as by the statute in this state.

Therefore, Mr. Vernon Richards is instructed to continue on in the fiduciary capacity if he can so act and if the plaintiffs are not satisfied with his conduct that he may be free to resign as the fiduciary in this matter and that Gordon should be appointed as the fiduciary to act in his place on the grounds and for the reason that he is in Vernal and is in a position to oversee the selling of the family home and to make sure that it is properly maintained and not abused and that it is maintained in a fashion that will make it saleable. The court is no unmindful of the fact that there might be a depressed market for the sale of real estate in Vernal but it also takes the position that the proffered sale alleged by the plaintiffs to have occurred was in fact not a legitimate offer and that it was not possible to consummate the sale and that there was no breach of fiduciary duty by Vernon Richards in regards to that matter.

It is further the position of the court that each party bear

their own attorney's fees and costs.

Mr. King is requested to prepare the appropriate Findings of Fact, Conclusions of Law and Decree not inconsistent with this Memorandum Decision and that under appropriate Third District Court Rule 2.9, submit the same to Mr. Marshall for approval and then for submission to the court for signature.

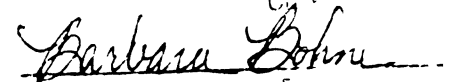
Dated this 18th day of August, 1986.



DAVID B. DEE, DISTRICT JUDGE

Copies mailed to counsel.

ATTEST
H DIXON HINCHLEY

B) 
Barbara Bohm

FILED

FILED
Salt Lake City

APR 24 1986

Q. Gordon

DWIGHT L. KING #591
DWIGHT L. KING & ASSOCIATES, P.C.
Attorneys for Plaintiffs
Suite 205 Sentinel Building
2121 South State Street
Salt Lake City, Utah 84115
Telephone: (801) 486-8701

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

SHIRLEY RAY RICHARDS, DELORES
R. MERKLEY and GORDON A.
RICHARDS,

Plaintiffs,

vs.

VERNON RICHARDS,

Defendant.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. C-85-4026

Judge David B. Dee

The above-entitled matter came on regularly to be heard on the 8th day of April, 1986. Plaintiffs appeared in person and by their attorney, Dwight L. King. Defendant appeared in person and by his attorney, R. Stephen Marshall. Witnesses were sworn and testified, exhibits received by the Court, the matter argued and submitted, all parties having rested, and having considered the written arguments of the respective attorneys and being fully informed in the premises, the Court does hereby make the following:

FINDINGS OF FACT

1. Defendant is a resident of Salt Lake County, State of Utah, residing in Salt Lake City.

2. Defendant and plaintiffs are the children and all of the

1 heirs of Bertha V. Richards and Lloyd Richards. Bertha V. Richards
2 died on July 21, 1983 in Vernal, Utah, and Lloyd Richards died on
3 September 26, 1983 in Vernal, Utah.

4 3. Both Bertha V. Richards and Lloyd Richards left wills
5 which provided generally for the distribution of their estates
6 equally among their four children. Each will named as the
7 executor the defendant, Vernon Richards.

8 4. Prior to the commencement of this action, on the 14th of
9 June, 1985, neither the will of Bertha V. Richards nor the will
10 of Lloyd Richards had been filed for probate in Uintah County.

11 5. Following the death of Bertha V. Richards in 1983 and
12 prior to the death of Lloyd Richards on September 26, 1983, the
13 parties to this action met at the family home in Vernal for the
14 purpose of dividing the estate of Bertha V. Richards pursuant to
15 directions that she had given which were not consistent with the
16 terms of her will. Certain money market certificates were
17 delivered to heirs and a distribution that took into account the
18 number of children and grandchildren, descendants of Bertha V.
19 Richards, was consummated. Lloyd Richards, at the conference,
20 forgave all debts that were owing by his heirs to him. The heirs,
21 following this family conference, adjusted certain distributions
22 and a distribution was ultimately completed prior to the death of
23 Lloyd Richards. The heirs accepted the distribution and no action
was taken to probate the estate of Bertha V. Richards by any of
the parties to this action.

6. Following the death of Lloyd Richards, defendant Vernon

1 Richards took possession of the documents found in the home of
2 Lloyd Richards, took possession of the mobile home, title to
3 which was in the name of Lloyd Richards, and since the date of the
4 death of Lloyd Richards has exercised control over the following
5 assets of Lloyd Richards:

6 (a) A mobile home with an approximate value of \$9,000.00.

7 (b) A real estate contract with one Robert H. Williams
8 on which Lloyd Richards and Bertha Richards are sellers and
9 Robert H. Williams is the buyer, which said contract was
10 dated August 5, 1975 and covers the following particularly
11 described real property:

12 BEGINNING at a point on the 1/8 line 9 rods West of
13 the Northeast corner of the Southeast quarter of the
14 Northeast quarter of Section 16, Township 4 South of
15 Range 21 East of the Salt Lake Meridian, and running
16 thence West 151 rods to the quarter line; thence
17 South 80 rods; thence East 436 feet; thence North
18 22-1/3 rods; thence East to the East line of the
19 Section; thence North 16 rods; thence West 16 rods;
20 thence North 10 rods; thence East 16 rods; thence
21 North 28-2/3 rods to a point 3 rods South of the
22 Northeast corner of the Southeast quarter of the
23 Northeast quarter of said Section 16; thence West
9 rods; thence North 3 rods to the place of beginning.
Containing 62 acres, more or less.

LESS the following described property:

18 BEGINNING at a point on the East line of Section 16,
19 Township 4 South, Range 21 East, Salt Lake Base &
20 Meridian, 45.82 feet South of the Northeast corner
21 Southeast quarter Northeast quarter, said section,
22 thence South along said section line 450.35 feet,
23 thence West parallel to the North line Southeast
quarter Northeast quarter, said section 327.78 feet,
thence North parallel to the East line said section
216.31 feet, thence North 89°59'04" West 213.16 feet,
thence North 17°18'44" West 293.71 feet to the North
line Southeast quarter Northeast quarter said section,
thence East along said 1/16th line 254.50 feet,

1 thence North parallel to East said section 18.38 feet;
2 thence East parallel to said 1/16th line 151.87 feet,
3 thence South parallel to East line said section 33.0
4 feet, thence South 71°22'59" East 97.99 feet, thence
5 East parallel to said 1/16th line 126.88 feet to
6 point of beginning. Bearings shown are based on the
7 assumption that the East line of Section 16, bears
8 South 0°21'18" East. Contains 5.2 acres more or less.

9 GRANTORS hereby retain unto themselves a one-half
10 interest in all oil, gas, hydro-carbons and mineral
11 rights on or under the above described property.

12 TOGETHER with all water and water rights thereunto
13 belonging, including the following water and water
14 rights: 2-3/4 shares of Central Irrigation Company;
15 and 31 shares of Steinaker Water in the Central Canal
16 Company.

17 The payments on said contract received by defendant have
18 amounted to \$19,442.91.

19 (c) Bank account at First Security Bank of Utah, Vernal
20 Branch, No. 123000012-062-11926-16, balance on deposit
21 \$2,942.41.

22 (d) Bank account at Zions First National Bank, Vernal
23 Branch, No. 26-31432-8, balance on deposit \$7,931.68.

24 (e) Water rights consisting of the following described
25 items: 2-3/4 shares of Central Irrigation Company and 31
26 shares of Steinaker Water in the Central Canal Company,
27 Certificate Nos. 683 and 3729.

28 (f) Mineral rights that attach to the property particularly
29 described in the contract of sale to Robert H. Williams.

30 7. During his lifetime, following the death of Bertha
31 Richards, Lloyd Richards executed a Warranty Deed in which he
32 transferred his home in Vernal, Utah, particularly described as
33 follows:

1 All of Lot 4, Meadow Park Subdivision, Vernal, Uintah
2 County, Utah, according to the official plat thereof
on file in the Office of the Recorder of Uintah County,
Utah.

3 SUBJECT to easements and restrictions of record.

4 TOGETHER with all improvements and appurtenances thereunto
belonging.

5 to Shirley Ray Richards, Vernon L. Richards, Delores Merkley, and
6 Gordon Andrew Richards. Court finds that it was the intention of
7 Lloyd Richards to deed an undivided one-fourth interest in the
8 home to each of his four children.

9 8. Following the death of Bertha V. Richards, Lloyd Richards
10 made a Warranty Deed to Shirley Ray Richards, his son, and deeded
to him the following particularly described real property:

11 BEGINNING at a point on the East line of Section 16,
12 Township 4 South, Range 21 East, Salt Lake Base and
Meridian, 45.82 feet South of the Northeast corner
13 Southeast quarter Northeast quarter said section, thence
South along said section line 258.35 feet, thence West
14 parallel to the North line Southeast quarter Northeast
quarter said section, 327.78 feet, thence North parallel
to the East line said section 24.31 feet, thence North
15 89°59'04" West 213.16 feet, thence North 17°18'44" West
293.71 feet to the North line Southeast quarter
16 Northeast quarter said section, thence East along said
1/16th line 254.50 feet, thence North parallel to East
said section 18.38 feet, thence East parallel to said
17 1/16th line 151.87 feet, thence South parallel to East
line said section 33.0 feet, thence South 71°22'59" East
18 97.99 feet, thence East parallel to said 1/16th line
126.88 feet to point of beginning. Bearings shown are
19 based on the assumption that the East line of Section 16,
bears South 0°21'18" East. Contains 3.8 acres, more or
20 less.

21 TOGETHER with any water or water rights appertaining thereto.

22 Court finds that it was the intention of Lloyd Richards to deed
23 an exclusive right to the property particularly described to his
son, Shirley Ray Richards.

1 9. Since the death of Lloyd Richards, many items of personal
2 property have been distributed by the plaintiffs and defendant
3 without objection by any of them. In the distribution, Court
4 finds that the parties attempted to distribute equally the
5 personal effects of their parents.

6 10. A 1982 Chrysler automobile owned by Lloyd Richards at the
7 time of his death has been sold by the plaintiff Gordon A. Richards
8 The net proceeds of said sale were divided equally by Gordon A.
9 Richards and distributed one-fourth to the plaintiffs and defendant
10 without objection by any party.

11 11. A bank account at First Security Bank, No. 62-813-9128,
12 with a balance of \$2,669.14, in the joint names of Bertha Richards
13 and Delores Merkley, was discovered. Court finds that said account
14 has been acknowledged by Delores Merkley as an item which should
15 be shared equally by the heirs of Bertha Richards.

16 12. Court finds that it was the intention of Bertha Richards
17 and Lloyd Richards to divide their estates equally between their
18 children as set forth in both of their wills. Court finds,
19 however, that during their lifetimes the deceased Bertha Richards
20 and Lloyd Richards made distributions to their children which
21 resulted in the children and their children, grandchildren of the
22 deceaseds, receiving a share that was not equal to the other
23 shares of their children. Court finds that the distributions
consummated during the lifetimes of Lloyd and Bertha Richards
were in accordance with their desires as distributions of their
estates.

1 13. Court finds that as to items listed in paragraph 7,
2 distribution was not made during the lifetime of Lloyd Richards
3 and/or Bertha Richards, and as to those items, Court finds that
4 it was the intention of Lloyd Richards and Bertha Richards that
5 their children share equally in those items.

6 14. As to the consummated gifts and distributions, Court
7 finds that the intentions of the deceased parents is demonstrated
8 by clear and convincing evidence and that no fraud, misrepresenta-
9 tion or undue influence was practiced on either of the deceaseds
10 in order to obtain a distribution of the assets.

11 15. Court finds that since the death of Bertha Richards and
12 Lloyd Richards, the heirs of Bertha Richards and Lloyd Richards
13 have, by repeated transactions between themselves, demonstrated
14 that they acknowledged awareness of the intentions of their
15 parents as found by the Court.

16 16. Court finds that there has been no breach of trust on
17 the part of any of the parties to this action and further finds
18 that the parties, in attempting to reconcile the differences that
19 have arisen, have delayed distribution beyond the time that was
20 reasonable. As a result of said delay, losses have been caused
21 in the value of the assets remaining undistributed among the heirs
22 of Lloyd and Bertha Richards. Court finds that this was not the
23 fault of any particular party to this action.

 17. Court finds that the assets in the possession of
defendant since the death of Bertha and Lloyd Richards, as listed
in paragraph 6, have been held by defendant as a trustee for

1 himself and the other parties to this action and the duty of
2 fidelity that arises from said relationship existed since the
3 death of Bertha Richards and Lloyd Richards and continues. Court
4 finds that defendant and other parties in possession of any asset
5 held in trust has the duty of accounting to the other beneficiaries
6 for his or her stewardship and is entitled to a credit for all
7 expenses actually incurred and paid. Such accounting should
8 include any earnings on sums received and held by a trustee since
9 the death of deceased Bertha Richards and Lloyd Richards.

10 18. Court finds that the trustees are not entitled to
11 attorney's fees, that delay in distribution is attributable to
12 disagreements which have a rational foundation.

13 From the foregoing Findings of Fact, the Court makes the
14 following:

15 CONCLUSIONS OF LAW

16 1. The following assets of Lloyd and Bertha Richards are
17 assets in which each of the plaintiffs and defendant is entitled
18 to share one-fourth each:

19 (a) A mobile home with an approximate value of \$9,000.00.

20 (b) A real estate contract with one Robert H. Williams
21 on which Lloyd Richards and Bertha Richards are sellers and
22 Robert H. Williams is the buyer, which said contract was
23 dated August 5, 1975 and covers the following particularly
described real property:

BEGINNING at a point on the 1/8 line 9 rods West of the Northeast corner of the Southeast quarter of the Northeast quarter of Section 16, Township 4 South of Range 21 East of the Salt Lake Meridian, and running thence West 151 rods to the quarter line; thence South 80 rods; thence East 436 feet; thence North 22-1/3 rods; thence East to the East line of the Section; thence North 16 rods; thence West 16 rods; thence North 10 rods; thence East 16 rods; thence North 28-2/3 rods to a point 3 rods South of the Northeast corner of the Southeast quarter of the Northeast quarter of said Section 16; thence West 9 rods; thence North 3 rods to the place of beginning. Containing 62 acres, more or less.

LESS the following described property:

BEGINNING at a point on the East line of Section 16, Township 4 South, Range 21 East, Salt Lake Base & Meridian, 45.82 feet South of the Northeast corner Southeast quarter Northeast quarter, said section, thence South along said section line 450.35 feet, thence West parallel to the North line Southeast quarter Northeast quarter, said section 327.78 feet, thence North parallel to the East line said section 216.31 feet, thence North 89°59'04" West 213.16 feet, thence North 17°18'44" West 293.71 feet to the North line Southeast quarter Northeast quarter said section, thence East along said 1/16th line 254.50 feet, thence North parallel to East said section 18.38 feet, thence East parallel to said 1/16th line 151.87 feet, thence South parallel to East line said section 33.0 feet, thence South 71°22'59" East 97.99 feet, thence East parallel to said 1/16th line 126.88 feet to point of beginning. Bearings shown are based on the assumption that the East line of Section 16, bears South 0°21'18" East. Contains 5.2 acres more or less.

GRANTORS hereby retain unto themselves a one-half interest in all oil, gas, hydro-carbons and mineral rights on or under the above described property.

TOGETHER with all water and water rights thereunto belonging, including the following water and water rights: 2-3/4 shares of Central Irrigation Company; and 31 shares of Steinaker Water in the Central Canal Company.

(c) Bank account at First Security Bank of Utah, Vernal Branch, No. 123000012-062-11926-16.

1 (d) Bank account at Zions First National Bank, Vernal
2 Branch, No. 26-31432-8.

3 (e) Water rights consisting of the following described
4 items: 2-3/4 shares of Central Irrigation Company and 31
5 shares of Steinaker Water in the Central Canal Company,
6 Certificate Nos. 683 and 3729.

7 (f) Mineral rights that attach to the property
8 particularly described in the contract of sale to Robert H.
9 Williams.

10 (g) Bank account in the name of Bertha Richards and
11 Delores R. Merkley at First Security Bank, No. 62-813-9128.

12 2. The following assets distributed during the lifetimes of
13 the deceased Bertha Richards and Lloyd Richards or pursuant to
14 agreement among the heirs, Court should determine, was in
15 accordance with the wishes, desires and intentions of the deceased
16 Bertha Richards and Lloyd Richards and the recipient of said items
17 is entitled to hold free of any trust the following items:

18 (a) The home of deceaseds at Vernal, Utah:

19 All of Lot 4, Meadow Park Subdivision, Vernal,
20 Uintah County, Utah, according to the official
21 plat thereof on file in the Office of the
22 Recorder of Uintah County, Utah.

23 SUBJECT to easements and restrictions of record.

TOGETHER with all improvements and appurtenances
thereunto belonging.

24 (c) BEGINNING at a point on the East line of Section
25 16, Township 4 South, Range 21 East, Salt Lake
26 Base and Meridian, 45.82 feet South of the
27 Northeast corner Southeast quarter Northeast
28 quarter said section, thence South along said
29 section line 258.35 feet, thence West parallel

1 to the North line Southeast quarter Northeast
2 quarter said section, 327.78 feet, thence North
3 parallel to the East line said section 24.31
4 feet, thence North 89°59'04" West 213.16 feet;
5 thence North 17°18'44" West 293.71 feet to the
6 North line Southeast quarter Northeast quarter
7 said section, thence East along said 1/16th line
8 254.50 feet, thence North parallel to East said
9 section 18.38 feet, thence East parallel to said
10 1/16th line 151.87 feet, thence South parallel
11 to East line said section 33.0 feet, thence South
12 71°22'59" East 97.99 feet, thence East parallel
13 to said 1/16th line 126.88 feet to point of
14 beginning. Bearings shown are based on the
15 assumption that the East line of Section 16, bears
16 South 0°21'18" East. Contains 3.8 acres, more or
17 less.

18 TOGETHER with any water or water rights appertaining
19 thereto.

20 (d) All sums of money distributed prior to the death of
21 Lloyd Richards from assets of Bertha Richards.

22 (e) All personal property items distributed prior to the
23 death of Lloyd Richards.

3. Court should order that as to the items listed in
paragraph 1 of these Conclusions, each person in possession of
said item should be determined by the Court to be a trustee of
said items, should be ordered by the Court to liquidate said items
within a reasonable time and distribute the net proceeds from said
sale or liquidation one-fourth to each of the plaintiffs and one-
fourth to defendant.

4. Court should order that the family home in which each of
the parties to this action own an undivided one-fourth interest
be sold as soon as reasonably practicable and the net proceeds
from said sale should be distributed one-fourth to each of the
parties to this action.

1 5. Court should enter an order that no attorney's fees are
2 granted to any party and that each of the parties to this action
3 bear and discharge their own attorney's fees. Trustees may charge
4 against the trust all reasonable expenses incurred by them,
5 including funeral and burial expense actually paid. Court should
6 further determine that no charge by any trustee for attorney's
7 fees should be made against the trust and that each person who
8 has assets in his or her possession as a trustee should be required
9 to pay and discharge from their own funds any attorney's fees
10 incurred by them during the time that they have acted as a trustee.

11 6. Court should order that all parties should cooperate and
12 execute such title documents to assets of the estates of Bertha
13 Richards and/or Lloyd Richards as soon as reasonably practicable
14 to facilitate liquidation and distribution of such assets.

15 7. Court should determine that if the defendant physically
16 is unable to handle the necessary work of liquidating assets which
17 he has in his possession or has record title to, or if defendant
18 desires to resign his position as trustee, then and in that event
19 the plaintiff Gordon A. Richards should be designated as trustee
20 and should be ordered by the Court to proceed as soon as reasonably
21 practicable to complete the liquidation of the assets that are
22 held as trustee by defendant.

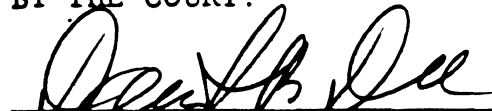
23 8. Court should determine that there are no creditors of
the estates of Bertha Richards or Lloyd Richards.

 9. Court should determine that the only heirs of Bertha
Richards and/or Lloyd Richards are the following persons:

Shirley Ray Richards, Delores R. Merkley, Gordon A. Richards, and
Vernon Richards.

DONE IN OPEN COURT this 23 day of Sept, 1986

BY THE COURT:


JUDGE

H. D. JON HINDLEY
CLERK

Approved as to form:

R. Stephen Marshall

MAILING AFFIDAVIT

Undersigned hereby certifies that he mailed to R. Stephen
Marshall, Attorney for Defendant, the Findings of Fact, Conclusions
of Law and Judgment in the above-entitled matter on September 25,
1986 and the same has not been returned and are hereby submitted
to the Court for signature this 8th day of September, 1986.


Dwight L. King

APR 8 1986

DWIGHT L. KING #591
DWIGHT L. KING & ASSOCIATES, P.C.
Attorneys for Plaintiff
Suite 205 Sentinel Building
2121 South State Street
Salt Lake City, Utah 84115
Telephone: (801) 486-8701

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

SHIRLEY RAY RICHARDS, DELORES
R. MERKLEY, and GORDON A.
RICHARDS,

Plaintiffs,

vs.

VERNON RICHARDS,

Defendant.

JUDGMENT

Civil No. C-85-4026

Judge David B. Dee

The above-entitled matter came on regularly to be heard on the 8th day of April, 1986. Plaintiffs appeared in person and by their attorney, Dwight L. King. Defendant appeared in person and by this attorney, R. Stephen Marshall. Witnesses were sworn and testified, exhibits received by the Court, the matter argued and submitted, all parties having rested, and having considered the written arguments of the respective attorneys and being fully informed in the premises, the Court, having made its Findings of Fact and Conclusions of Law, does hereby ORDER, ADJUDGE AND DECREE as follows:

1. Plaintiffs and defendant are the owners of a one-fourth undivided interest in each of the following assets or the sums

1 realized from the liquidation thereof:

2 (a) A mobile home with an approximate value of \$9,000.00.

3 (b) A real estate contract with one Robert H. Williams
4 on which Lloyd Richards and Bertha Richards are sellers and
5 Robert H. Williams is the buyer, which said contract was
6 dated August 5, 1975 and covers the following particularly
described real property:

7 BEGINNING at a point on the 1/8 line 9 rods West of
8 the Northeast corner of the Southeast quarter of the
9 Northeast quarter of Section 16, Township 4 South of
10 Range 21 East of the Salt Lake Meridian, and running
11 thence West 151 rods to the quarter line; thence South
12 80 rods; thence East 436 feet; thence North 22-1/3
13 rods; thence East to the East line of the Section;
thence North 16 rods; thence West 16 rods; thence
North 10 rods; thence East 16 rods; thence North
28-2/3 rods to a point 3 rods South of the Northeast
corner of the Southeast quarter of the Northeast
quarter of said Section 16; thence West 9 rods; thence
North 3 rods to the place of beginning. Containing
62 acres, more or less.

14 LESS the following described property:

15 BEGINNING at a point on the East line of Section 16,
16 Township 4 South, Range 21 East, Salt Lake Base &
17 Meridian, 45.82 feet South of the Northeast corner
18 Southeast quarter Northeast quarter, said section,
19 thence South along said section line 450.35 feet,
thence West parallel to the North line Southeast
quarter Northeast quarter, said section 327.78 feet,
thence North parallel to the East line said section
216.31 feet, thence North 89°59'04" West 213.16 feet,
thence North 17°18'44" West 293.71 feet to the North
line Southeast quarter Northeast quarter said section,
thence East along said 1/16th line 254.50 feet,
thence North parallel to East said section 18.38 feet,
20 thence East parallel to said 1/16th line 151.87 feet,
thence South parallel to East line said section 33.0
21 feet, thence South 71°22'59" East 97.99 feet, thence
East parallel to said 1/16th line 126.88 feet to
22 point of beginning. Bearings shown are based on the
assumption that the East line of Section 16, bears
23 South 0°21'18" East. Contains 5.2 acres more or less.

GRANTORS hereby retain unto themselves a one-half interest in all oil, gas, hydro-carbons and mineral rights on or under the above described property.

TOGETHER with all water and water rights thereunto belonging, including the following water and water rights: 2-3/4 shares of Central Irrigation Company; and 31 shares of Steinaker Water in the Central Canal Company.

(c) Bank account at First Security Bank of Utah, Vernal Branch, No. 123000012-062-11926-16.

(d) Bank account at Zions First National Bank, Vernal Branch, No. 26-31432-8.

(e) Water rights consisting of the following described items: 2-3/4 shares of Central Irrigation Company and 31 shares of Steinaker Water in the Central Canal Company, Certificate Nos. 683 and 3729.

(f) Mineral rights that attach to the property particularly described in the contract of sale to Robert H. Williams.

(g) Bank account in the name of Bertha Richrds and Delores R. Merkley at First Security Bank, No. 62-813-9128.

2. Plaintiffs Shirley Ray Richards, Delores R. Merkley, and Gordon A. Richards, and defendant Vernon Richards are the owners of an undivided one-fourth interest in the following real estate:

The home of deceaseds at Vernal, Utah.

All of the owners of said real property are directed that the home is to be sold as soon as reasonably practicable and the net proceeds divided one-fourth to each of the owners.

3. Shirley Ray Richards is the owner of the following

particularly described real property free of all claims of the other parties to this action:

BEGINNING at a point on the East line of Section 16, Township 4 South, Range 21 East, Salt Lake Base and Meridian, 45.82 feet South of the Northeast corner Southeast quarter Northeast quarter said section, thence South along said section line 258.35 feet, thence West parallel to the North line Southeast quarter Northeast quarter said section, 327.78 feet, thence North parallel to the East line said section 24.31 feet, thence North 89°59'04" West 213.16 feet, thence North 17°18'44" West 293.71 feet to the North line Southeast quarter Northeast quarter said section, thence East along said 1/16th line 254.50 feet, thence North parallel to East said section 18.38 feet, thence East parallel to said 1/16th line 151.87 feet, thence South parallel to East line said section 33.0 feet, thence South 71°22'59" East 97.99 feet, thence East parallel to said 1/16th line 126.88 feet to point of beginning. Bearings shown are based on the assumption that the East line of Section 16, bears South 0°21'18" East. Contains 3.8 acres, more or less.

TOGETHER with any water or water rights appertaining thereto.

4. Each of the parties to this action is the owner free and clear of any claim of any other party to this action of all sums of money or other personal property distributed to them prior to the death of Lloyd Richards or subsequent thereto pursuant to distributions to which no objection was made.

5. Each of the parties in possession of an item listed in paragraph 1 of this Judgment, or who has control of such item, is a trustee of the item for the benefit of the following named persons: Shirley Ray Richards, Delores R. Merkley, Gordon A. Richards, and Vernon Richards. Trustees are ordered to liquidate and distribute equally among the beneficiaries the listed assets within a reasonable time following the entry of this judgment.

6. Each of the parties to this action is ordered to

1 cooperate one with another in the offering and sale of the family
2 home at Vernal, Utah, more particularly described as follows:

3 All of Lot 4, Meadow Park Subdivision, Vernal, Uintah
4 County, Utah, according to the official plat thereof
on file in the Office of the Recorder of Uintah County,
Utah.

5 SUBJECT to easements and restrictions of record.

6 TOGETHER with all improvements and appurtenances thereunto
belonging.

7 Each of the parties to this action is entitled to a one-fourth
8 interest in the net proceeds from the sale of the family home.
9 Each party is ordered to cooperate with the other parties and
10 execute such title instruments as are necessary to liquidate and
11 distribute the assets of the estates of Bertha Richards and/or
Lloyd Richards.

12 7. Each of the parties to this action should be required to
13 pay their own attorney's fees. Parties holding in trust certain
14 properties as determined by this Judgment are entitled to be paid
15 the reasonable expense of the handling of the trust assets,
16 including, but not limited to, all funeral expenses actually paid
17 by said party for the funeral and burial of the deceaseds Bertha
18 Richards and Lloyd Richards. No trustee shall be entitled to
19 charge the trust estate for any attorney's fees incurred by said
20 party in the handling of the trust or in the prosecution or
defense of this action.

21 8. Defendant shall be entitled to continue to handle the
22 necessary work of liquidating assets in his control on which he
23 is a trustee. It is the judgment of the Court that should
defendant be unable to physically or mentally handle the necessary

work of liquidating the trust assets, or should he desire to resign the trust, the plaintiff Gordon A. Richards is hereby appointed as successor trustee to complete the liquidation of the assets in which the deceased Bertha V. Richards or Lloyd Richards had an interest during their lifetimes.

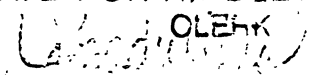
9. Court determines that there are no known creditors of the estates of Bertha V. Richards or Lloyd Richards. The heirs of Bertha V. Richards and Lloyd Richards are the following persons: Shirley Ray Richards, Delores R. Merkley, Gordon A. Richards, and Vernon Richards.

DONE IN OPEN COURT this 23 day of Sept, 1986.

BY THE COURT:


JUDGE

H. DIXON HINDLEY

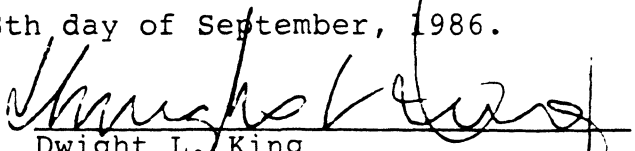
By 
Deputy Clerk

Approved as to form:

R. Stephen Marshall
Attorney for Defendant

MAILING AFFIDAVIT

Undersigned hereby certifies that he mailed to R. Stephen Marshall, Attorney for Defendant, the Findings of Fact, Conclusions of Law and Judgment in the above-entitled matter on September 25, 1986 and the same has not been returned and are hereby submitted to the Court for signature this 8th day of September, 1986.


Dwight L. King